

1 STATE OF MINNESOTA DISTRICT COURT

2 COUNTY OF RAMSEY SECOND JUDICIAL DISTRICT

3 - - - - -

4 The State of Minnesota,

5 by Hubert H. Humphrey, III,

6 its attorney general,

7 and

8 Blue Cross and Blue Shield

9 of Minnesota,

10 Plaintiffs,

11 vs. File No. C1-94-8565

12 Philip Morris Incorporated, R.J.

13 Reynolds Tobacco Company, Brown

14 & Williamson Tobacco Corporation,

15 B.A.T. Industries P.L.C., Lorillard

16 Tobacco Company, The American

17 Tobacco Company, Liggett Group, Inc.,

18 The Council for Tobacco Research-U.S.A.,

19 Inc., and The Tobacco Institute, Inc.,

20 Defendants.

21 - - - - -

22 DEPOSITION OF GARY W. WALLACE

23

24

25

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1           (The following is the Deposition of GARY  
2 W. WALLACE, taken pursuant to Notice of Taking  
3 Deposition, by videotape, at the offices of Robins  
4 Kaplan Miller & Ciresi, Attorneys at Law, 2800  
5 LaSalle Plaza, 800 LaSalle Avenue, Minneapolis,  
6 Minnesota, on September 29, 1997, commencing at  
7 approximately 2:59 o'clock p.m.)

8

## 9 APPEARANCES:

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1	EXAMINATION INDEX		
2	WITNESS	EXAMINED BY	PAGE
3	Gary W. Wallace	Ms. Wivell	5
4			
5			
6			
7			
8			
9			
10			
11			
12			
13			
14			
15			
16			
17			
18			
19			
20			
21			
22			
23			
24			
25			

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1 P R O C E E D I N G S

2 (Witness sworn.)

3 GARY W. WALLACE,

4 called as a witness, being first duly

5 sworn, was examined and testified as

6 follows:

7 ADVERSE EXAMINATION

8 BY MS. WIVELL:

9 Q. Would you state your name, please.

10 A. Gary W. Wallace.

11 Q. Mr. Wallace, by whom are you employed?

12 A. I'm employed by Brown & Williamson Tobacco

13 Company.

14 Q. For how long have you been employed by B&W?

15 A. Approximately three years.

16 Q. What's your position?

17 A. I'm a senior product developer 2.

18 Q. What does a senior product developer 2 do?

19 A. Develop products.

20 Q. Cigarettes?

21 A. Yes.

22 Q. You said you've had that position for about

23 three years; is that right?

24 A. Yes, ma'am.

25 Q. What department are you in?

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- 1 A. I'm in the research and development department.
- 2 Q. Were you employed by Brown & Williamson before
- 3 that?
- 4 A. No, ma'am.
- 5 Q. By whom were you employed?
- 6 A. R.J. Reynolds Tobacco Company.
- 7 Q. How long were you at Reynolds?
- 8 A. Approximately 13 years.
- 9 Q. You understand that your deposition is being
- 10 taken here today because the plaintiffs noticed the
- 11 deposition of Brown & Williamson; right?
- 12 A. Yes, ma'am.
- 13 Q. And they noticed the deposition of Brown &
- 14 Williamson on several different topics; right?
- 15 A. Yes.
- 16 Q. One of those topics was collection and
- 17 production of Category 2 documents in this
- 18 litigation; right?
- 19 A. Yes.
- 20 Q. And you're here today as Brown & Williamson's
- 21 spokesperson to testify about the collection and
- 22 production of Category 2 documents in this
- 23 litigation.
- 24 A. Yes.
- 25 Q. Now sir, you understand that by "this

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1 litigation" we're referring to the case that the  
2 State of Minnesota and Blue Cross\Blue Shield have  
3 brought on behalf -- on their behalfs against Brown &  
4 Williamson and other cigarette manufacturers and  
5 other defendants; right?

6 A. Yes.

7 Q. Can we agree that when we talk about production  
8 in "this case" that we're referring to the case  
9 brought by the State of Minnesota and Blue Cross\Blue  
10 Shield?

11 A. Can you repeat that, please?

12 Q. Yes, sir.

13 Can we agree that when we talk about production  
14 of Category 2 documents in this litigation, that what  
15 we're talking about is collection and production of  
16 those documents in the case brought by the State of  
17 Minnesota and Blue Cross\Blue Shield?

18 A. Yes.

19 Q. And you recognize that you're Brown &  
20 Williamson's spokesperson here today to talk about  
21 that subject; right?

22 A. Yes.

23 Q. What did you do to prepare for your deposition?

24 A. Actually I guess preparation would have occurred  
25 even back when I was in school, my scientific

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1 background, degrees in food science, three different  
2 schools, two of them being postgraduate; my years in  
3 the industry itself; my three years particularly at  
4 Brown & Williamson. Also the preparations I've made  
5 for this particular deposition today.

6 Q. What are those particular preparations?

7 A. I had discussions with various employees of  
8 Brown & Williamson.

9 Q. Anything else?

10 A. I had meetings with counsel.

11 Q. Anything else?

12 A. I reviewed the documents, Category 2 documents,  
13 and I reviewed various court documents.

14 Q. All right. Well let's start with the  
15 employees. To whom did you speak?

16 A. I spoke with Tilford Riehl.

17 Q. What's his position?

18 A. He's the vice-president of research and  
19 development.

20 Q. To -- Who else did you speak to?

21 A. I spoke to Andrew McMurtrie.

22 Q. What's his position?

23 A. He's the director of product development.

24 Q. Who else did you speak to?

25 A. I spoke with Pam Smith.

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- 1 Q. What's Ms. Smith's position?
- 2 A. She is in our regulatory affairs group.
- 3 Q. Who else did you speak to?
- 4 A. I spoke with Alex Golub.
- 5 (Interruption by the reporter.)
- 6 Q. Is that a miss or a mister?
- 7 A. That's a mister.
- 8 Q. All right. And what's Mr. Golub's position?
- 9 A. He is senior manager in our analytical services
- 10 department.
- 11 Q. Is there anyone else you spoke to?
- 12 A. And I spoke with some more people. I spoke with
- 13 John Anders.
- 14 Q. What's Mr. Anders' current position?
- 15 A. He's a senior manager, product development.
- 16 Q. Anyone else that you spoke to?
- 17 A. Mr. James Horn.
- 18 Q. What's his position?
- 19 A. I'm not positive of his position. He's in the
- 20 information technology group at corporate
- 21 headquarters.
- 22 Q. What's the information technology group?
- 23 A. Some people call it management information
- 24 systems. It's a computer person.
- 25 Q. Anyone else that you spoke to?

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- 1 A. Marcel Hamann.
- 2 Q. What's Mr. Hamann's position.
- 3 A. He is a senior manager in product development.
- 4 Q. Anyone else you spoke to?
- 5 A. Wayne Sanders.
- 6 Q. What's Mr. Sanders' position?
- 7 A. He's a specifications specialist or technician,
- 8 I'm not sure which.
- 9 Q. When you say "specifications," what are you
- 10 referring to?
- 11 A. There is a specifications group within the
- 12 product development area within R&D at Brown &
- 13 Williamson.
- 14 Q. And what does the specifications group do?
- 15 A. They enter specifications.
- 16 Q. What are "specifications"?
- 17 A. Specifications for our products, such as the
- 18 length of the product, the type of filter it uses,
- 19 the tipping paper it uses, the type of blend that
- 20 goes in it.
- 21 Q. When you say "they enter specifications" what do
- 22 you mean?
- 23 A. We have a large specification database and it
- 24 has to be maintained, as products change for one
- 25 reason or another, a new product is perhaps requested

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1 for distribution somewhere, that product has to be  
2 designated and all the various and sundry parts have  
3 to be entered into that database.  
4 Q. This is a computer database that you're  
5 referring to.  
6 A. That's correct.  
7 Q. Is there anyone else you spoke with?  
8 A. Yes. Rodney Mitchell.  
9 Q. What's Mr. Mitchell's position?  
10 A. He's senior flavorist.  
11 Q. What's a flavorist?  
12 A. A person who deals with flavors.  
13 Q. Now is there anyone else that you spoke with?  
14 A. I spoke with Kelly St. Charles.  
15 Q. Is that a Mr. or a Ms.?  
16 A. That's a mister. Actually I believe he's  
17 doctor.  
18 Q. All right. What's his position?  
19 A. He's a master scientist, I believe.  
20 Q. Is there anyone else that you spoke with?  
21 A. Susan Ward.  
22 Q. What's Ms. Ward's position?  
23 A. Again she's a specification specialist, I don't  
24 know her exact title.  
25 Q. Have we now completed the list of all the people

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1 who are employees of Brown & Williamson that you  
2 spoke to in preparation for your deposition today?  
3 A. Yes.  
4 Q. Now you said you spoke to counsel. To whom did  
5 you speak?  
6 A. Spoke to Mitch Nuhouse -- Neuhuser.  
7 Q. Anyone else?  
8 A. Mr. Willoughby.  
9 Q. Anyone else?  
10 A. Randy Gibeau.  
11 Q. Anyone else?  
12 A. Andrew Walcoff.  
13 Q. Have we now completed the list?  
14 A. Jody Warner.  
15 Q. Who else?  
16 A. Mr. Fribley.  
17 Q. That it?  
18 A. Richard Schneider.  
19 Q. Anyone else?  
20 A. That's good.  
21 Q. Now sir, did you take part in the collection of  
22 -- and production of Category 2 documents in this  
23 case?  
24 A. Yes, I was swept, my office was swept, so I took  
25 part in the collection by being interviewed, by

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1 discussing my files, by providing those files that  
2 were of particular interest to the individuals who  
3 were performing the collection.

4 Q. In preparation for your deposition today did you  
5 read any testimony?

6 A. Not that I'm aware of.

7 Q. Was any testimony that's already been taken in  
8 this case read to you?

9 A. No.

10 Q. Who was involved in the collection and  
11 production of Category 2 documents in this case?

12 A. If we go back to the original collections that  
13 were first started which were pre this case, back in  
14 the '80s, I'm not sure who actually collected those.

15 The first big sweep that was made relative to  
16 this case, I know Mr. Willoughby was involved with  
17 that collection. The two subsequent sweeps that were  
18 more focused, more narrow, special sweeps I believe  
19 were conducted by Mr. Neuhuser.

20 Q. Who's Mr. Neuhuser with, is he in-house at B&W?

21 A. Yes, I believe he is.

22 Q. Who actually made the decision about whether a  
23 document was a Category 2 document?

24 A. Those individuals who reviewed the documents.

25 Q. Now it's my understanding, and correct me if I'm

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1 wrong, that documents were reviewed for  
2 responsiveness in this case. Are you saying that the  
3 Category 2 determination was made at the time the  
4 responsiveness decision was made?

5 MR. WILLOUGHBY: Objection, form. You can  
6 answer.

7 A. I don't think it was exactly like that, no.

8 Q. All right. Well how was -- Describe for me,  
9 please, the process by which it was determined that a  
10 particular document would be stamped Category 2.

11 A. It would have to meet the Category 2 standards.

12 Q. What do you understand those standards were?

13 A. The document would have to be a trade secret, it  
14 would have to also be of extreme sensitivity, highly  
15 sensitive, so sensitive that in fact its disclosure  
16 to a third party, especially a third-party  
17 competitor, would do irreparable competitive harm.  
18 Finally, it would have to have and contain  
19 information concerning formulas, specifications,  
20 processes, recipes, et cetera.

21 (Discussion off the stenographic record.)

22 Q. Who was responsible for making the call about  
23 whether something was a Category 2 document?

24 A. No one -- No one person was really responsible  
25 for that, it was a more concerted effort. Prior to

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1 those things being decided there were meetings that  
2 occurred with technically competent people at B&W  
3 with counsel so that counsel understood what the  
4 types of Category 2 documents would look like, what  
5 form they would be in. I'm not sure that there was  
6 just one meeting, there may have been more than one.  
7 The various attorneys who were going to be involved  
8 in the review, the team was then taken through  
9 seminars as well so that their understanding of the  
10 documents would be foolproof most basically.

11 Q. All right. Now you said something in your last  
12 answer, --

13 A. Umm-hmm.

14 Q. -- something about counsel understood what the  
15 types of Category 2 documents would look like. Do  
16 you recall that, sir?

17 A. Yes.

18 Q. What do you mean by that?

19 A. Formula specifications. Every company has  
20 different looks to those types of documents.  
21 Documents that may look Category 2 may in fact not  
22 be. Others that don't look like, could be. So there  
23 were sample documents as far as -- We had technical  
24 advisors from our side to help explain the technical  
25 part of the stuff that the attorneys would not

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1 necessarily understand.

2 Q. Who were the technical advisors that advised on  
3 the Category 2 issues?

4 A. It's my understanding it was Kelly St. Charles  
5 and Andrew McMurtrie.

6 Q. Who were the lawyers that went through this  
7 training process?

8 A. I know Ms. Warner was one of the supervisory  
9 personnel, as well as Jennifer, I believe it's  
10 Tuvlin, I'm not positive about her last name. Those  
11 two, but as far as individuals I do know of two that  
12 were involved and did review documents, and that was  
13 Randy Gibeau and Andrew Walcoff. Others I'm not  
14 aware of.

15 Q. Who ultimately on the attorneys' side was  
16 responsible for the Category 2 production?

17 MR. WILLOUGHBY: Objection, form.

18 A. I would assume in the later two sweeps it would  
19 have been Ms. Warner, --

20 Q. Wasn't Mr. --

21 A. -- but I'm not sure.

22 Q. Wasn't Mr. Willoughby responsible, ultimately?

23 A. I know that he was responsible in the first big  
24 broad sweep. I'm not sure about the other two  
25 sweeps. Ultimately, I'm not positive.

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1 Q. What were the physical locations where Category  
2 2 documents were collected from?

3 A. They would have been collected from Macon; they  
4 would have been collected in Louisville; they would  
5 have been collected in Lancaster, Pennsylvania; they  
6 would have been collected at the Hamner facility in  
7 Virginia, and they would have been collected in  
8 Wilson, North Carolina.

9 Q. Were documents that were transferred from  
10 American Tobacco to Brown & Williamson included in  
11 this production?

12 A. Yes.

13 Q. So is it your testimony that Brown & Williamson  
14 has produced formula documents for American Tobacco's  
15 cigarettes that were transferred to Brown &  
16 Williamson at the time of the sale?

17 MR. WILLOUGHBY: Objection, form.

18 A. Yes, there were American documents in the  
19 production that came to Macon at the time of the  
20 sale.

21 Q. And have these been produced to plaintiffs?

22 A. Yes, they have.

23 Q. Have they all been produced to plaintiffs?

24 A. To the best of my knowledge they have all been  
25 produced.

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1 Q. Are there any that have been destroyed?

2 A. No.

3 Q. Is there a particular place within the Macon  
4 facility, for example, where Category 2 documents are  
5 kept in the ordinary course of business?

6 A. They could be kept in several locations. There  
7 are some that are specifically located because of the  
8 personnel who handle that type of information and are  
9 doing that on their day-to-day business. Other  
10 individuals such as myself may have some Category 2  
11 documents as a part of my business conduct on a  
12 particular project that I am working on. That's why  
13 you -- I guess it's easier to say there are certain  
14 people who work on certain things who are going to  
15 have a lot of Category 2 documents, and other people  
16 will have very few.

17 Q. Who are the people you would expect to have a  
18 lot of Category 2 documents?

19 A. Pam Smith.

20 Q. Why?

21 A. She is in charge of our flavor disclosure system  
22 and our regulatory affairs work that goes on.

23 Q. And were Category 2 documents from Ms. Smith  
24 produced to the plaintiffs in this case?

25 A. Yes.

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1 Q. Were all of the Category 2 -- I'm sorry. Strike  
2 that.

3 Were all of the flavor documents that were in  
4 possession of Pam Smith produced to the plaintiffs in  
5 this case?

6 MR. WILLOUGHBY: Objection to form.

7 A. As far as I know they were, yes.

8 Q. Who else would you expect to have a lot of  
9 Category 2 documents?

10 A. Our specifications people.

11 Q. Were all of the documents in the possession of  
12 the specifications people produced to plaintiffs in  
13 this case?

14 MR. WILLOUGHBY: Objection to form. When  
15 you're saying "all documents," are you talking about  
16 all documents responsive to the requests, or are you  
17 talking about all documents, Ms. Wivell?

18 MS. WIVELL: No, all documents responsive  
19 to the requests.

20 MR. WILLOUGHBY: Okay. Thank you.

21 A. Oh, to my -- Yes. As far as I know, yes.

22 Q. Who else would you expect to have a large number  
23 of Category 2 documents?

24 A. Our flavorists.

25 Q. And were all documents responsive to plaintiffs'

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1 requests in this case in the possession of the  
2 flavorists at Brown & Williamson produced?

3 A. As far as I know, yes.

4 Q. Is there any other group or individual who you  
5 would expect to have a large number of Category 2  
6 documents?

7 A. Our upper management would have those types of  
8 documents perhaps in their files, yes. Tilford  
9 Riehl, Andrew McMurtrie.

10 Q. And did you ask Mr. Riehl if all of the  
11 documents in his possession relating to flavors,  
12 formulas and process were produced?

13 A. Yes.

14 Q. And what was the answer?

15 A. The answer was --

16 MR. WILLOUGHBY: Objection to form. You  
17 may answer.

18 A. Yes, that's exactly what he said.

19 Q. All right. Did you ask Mr. McMurtrie if all  
20 documents in his possession concerning flavor,  
21 process or formula were produced?

22 MR. WILLOUGHBY: Same objection that we had  
23 before.

24 A. Yes.

25 Q. And what was the response?

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1 A. Yes. They've all been produced.

2 Q. Are there any other groups of individuals or  
3 single people that you would expect to have a large  
4 number of Category 2 documents in their possession?

5 A. Our leaf group would have a large amount. Leaf  
6 group.

7 Q. And did you check to determine whether all of  
8 the leaf group's documents concerning flavor, process  
9 or formula had been produced to plaintiffs in this  
10 case?

11 MR. WILLOUGHBY: Objection as to form, our  
12 understanding that we had earlier. And the record  
13 should reflect that Ms. Wivell nodded yes, please.

14 You may answer.

15 A. The -- Yes.

16 Q. Just so we're clear, here, and perhaps there's  
17 been a misunderstanding and I just want to straighten  
18 it out. Were there any Category 2 documents relating  
19 to formula in the possession of Brown & Williamson  
20 which were not produced to the plaintiffs?

21 MR. WILLOUGHBY: And Ms. Wivell, here's  
22 where we're trying to understand. The document  
23 request relating to formula and stuff, different from  
24 earlier document requests from the plaintiffs, sought  
25 documents sufficient to show, not all documents, and

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1 my earlier objections related to whether or not all  
2 the responsive documents had been produced.

3 MS. WIVELL: And I'm trying to establish if  
4 there were any formula documents which were not  
5 produced to the plaintiffs in this case.

6 A. I'm not aware of any.

7 Q. Were there any documents concerning production  
8 process which were not produced to the plaintiffs in  
9 this case?

10 MR. WILLOUGHBY: Objection to form. Again  
11 are you asking for responsive documents? When you  
12 say "processing documents" I'm not specifically aware  
13 of the particular request that you're referring to.  
14 With "formulas" I am.

15 Q. All right. Well sir, are there documents that  
16 talk about the processing procedures not, for  
17 example, the run sheets for a particular day, but  
18 that talk about the process for production of  
19 cigarettes that have been sold in the State of  
20 Minnesota that have not been produced to the  
21 plaintiffs.

22 MR. WILLOUGHBY: Again, requested  
23 documents; is that correct, Ms. Wivell? You may  
24 answer.

25 A. None that I'm aware of. In fact I recall there

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1 is a process manual which in fact was part of a  
2 production.

3 Q. Now sir, were there any documents relating to  
4 flavors that were used in cigarettes that had been  
5 sold by Brown & Williamson in the State of Minnesota  
6 that have not been produced to the plaintiffs?

7 MR. WILLOUGHBY: Same objection.

8 A. Not that I'm aware of.

9 Q. Are there any places that were likely to have  
10 Category 2 documents that were not searched?

11 A. No.

12 Q. Is there a vault someplace that Brown &  
13 Williamson keeps its formula documents in?

14 A. Not that I'm aware of, not a vault.

15 Q. Is there some kind of security procedure  
16 that's --

17 A. Absolutely.

18 Q. All right. What are the security procedures  
19 that are in place with regard to keeping these  
20 Category 2-type documents secret?

21 A. We can start at the front gate. You can't get  
22 in, unless you want to crawl over the fence, without  
23 permission. There are security guards at the front  
24 door as well. We have a carded entry into R&D.

25 Q. What does that mean?

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1 A. Electronic card reader. You have to have a card  
2 that's swiped to -- or you can't get in.

3 Q. Okay.

4 A. Let's look at corporate specs. You can't get  
5 into corporate specs as an employee even unless you  
6 have the access to it. Everything is passworded.

7 Q. What do you mean by "corporate specs"?

8 MR. WILLOUGHBY: You can't talk in  
9 shorthand, you have to use the full words.

10 THE WITNESS: Oh, I'm sorry.

11 A. The corporate specification system that I use,  
12 not every day, but at least weekly, contains a lot of  
13 very proprietary information. You can't get to it  
14 unless you have -- Even if you got into the building,  
15 if you don't have a password you can't get on the  
16 system, you can't get into it.

17 Q. Is that corporate specification system on  
18 computer?

19 A. It's on a computer. It's not that small a  
20 computer.

21 Q. All right. But it is a computer database;  
22 right?

23 A. Yes, ma'am.

24 Q. And that's password controlled?

25 A. Yes.

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1 Q. Are there any other security arrangements in  
2 place?

3 A. Most very sensitive documents people -- very few  
4 people have copies of them. They are locked, they  
5 are not available. An excellent example is flavor  
6 disclosures and certain parts of the flavor system.  
7 I do not have access to those documents.

8 Q. Are they on a need-to-know basis?

9 A. And even then it's very -- it's very difficult.

10 Q. There are few people who need to know; right?

11 A. Yes.

12 Q. Okay. Are there any other security systems in  
13 place?

14 A. A lot of video.

15 Q. What do you mean by that?

16 A. Camera, surveillance cameras.

17 Q. Watching --

18 A. Outside the building.

19 Q. Are there surveillance cameras within the  
20 building too?

21 A. Not that I'm aware of.

22 Q. There just might be, but you just don't know of  
23 them.

24 A. I'm not aware of them, no.

25 MS. WIVELL: I hate to do this, but I need

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1 to take break.

2 MR. WILLOUGHBY: Yes, ma'am. Fine.

3 THE REPORTER: Off the record, please.

4 (Recess taken from 3:22 to 3:26 p.m.)

5 BY MS. WIVELL:

6 Q. Sir, why all this need for surveillance and  
7 secrecy?

8 A. We have a lot of information in that facility,  
9 as well as it's a manufacturing facility as well, so  
10 security is of the utmost.

11 Q. Well focusing on the Category 2 subjects, would  
12 you agree that the information that's contained in  
13 the Category 2 documents is among the most important  
14 information that Brown & Williamson has?

15 MR. WILLOUGHBY: Objection to form.

16 A. It is very sensitive information.

17 Q. And you would agree, sir, wouldn't you, that the  
18 Category 2 information concerning the formulas and  
19 the processes that go into making Brown &  
20 Williamson's cigarettes are among its most important  
21 trade secrets?

22 A. It is extremely important information, it's what  
23 differentiates our products from our competitor's  
24 products.

25 Q. And you would agree that it's important trade

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- 1 secret information; right?
- 2 A. It is beyond trade secret.
- 3 Q. What do you mean, "beyond trade secret"?
- 4 A. It is information that we can't allow anybody
- 5 else to get.
- 6 Q. Now sir, did Brown & Williamson produce
- 7 documents sufficient to identify the formula,
- 8 ingredients and processing for all cigarettes it sold
- 9 in Minnesota from 1954 to the present?
- 10 A. Yes.
- 11 Q. Did Brown & Williamson produce documents in its
- 12 possession relating to the formula, ingredients and
- 13 processing for all cigarettes sold in Minnesota from
- 14 1954 to the present that were manufactured by
- 15 American Tobacco Company?
- 16 A. To the best of my knowledge that would be true.
- 17 Q. How were the documents that were produced under
- 18 the Category 2 label assembled for Bates numbering
- 19 and productions?
- 20 A. They had already been Bates numbered.
- 21 Q. Sir, has anyone gone through and made a document
- 22 which is a compilation of the formulas that have been
- 23 used in various Brown & Williamson cigarettes over
- 24 the years?
- 25 A. There's no single list anywhere. The best

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1 compilation is the printout that -- the download of  
2 our corporate manufacturing specifications.

3 Q. What's that document called?

4 A. It's the corporate specification system.

5 Q. Has anyone gone through and summarized the  
6 formula information for some of Brown & Williamson's  
7 cigarettes?

8 A. If they have, it would be in a very rare  
9 instance. I'm not aware of one necessarily.

10 Q. Sir, has anyone, for example, gone through and  
11 written out all the different formulas for Kool  
12 cigarettes from 1954 to the present?

13 A. No.

14 Q. Have you ever seen such a list for Viceroy  
15 cigarettes?

16 A. No.

17 Q. How about for any other -- Strike that.

18 How about for any other Brown & Williamson  
19 brand, have you ever seen some document that  
20 summarizes the different formulas?

21 A. No.

22 Q. Were formula documents relating to Brown &  
23 Williamson's cigarettes ever destroyed?

24 A. Not that I'm aware of.

25 Q. Now sir, you mentioned -- Well wait a second.

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1 I believe that plaintiffs have been told by  
2 Brown & Williamson that formula documents were often  
3 routinely destroyed. Are you aware of information to  
4 that effect?

5 A. No.

6 Q. Well let me ask you this. As formula --  
7 Formulas changed in Brown & Williamson brands over  
8 time, didn't they?

9 A. Occasionally they change, yes.

10 Q. And when a new formula is adopted, for example,  
11 for Kool, were old formula documents destroyed?

12 A. Not that I'm aware of.

13 Q. But it could have happened and you're just not  
14 aware of it?

15 A. Back to 1988, going back to the corporate  
16 specification system, that thing is absolutely  
17 complete. You'll notice, if you've gone through the  
18 Category 2 production, there are tens of thousands of  
19 other documents, in all cases here, whether it was  
20 the initial big sweep or whether it was these two  
21 focused sweeps, a good-faith effort was put forward  
22 to find every single responsive document.

23 Q. Now you mentioned this corporate specification  
24 system.

25 A. Yes.

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1 Q. What is that?

2 A. It's a very large database, it happens to be in  
3 an ADABAS form, it's written in a Natural computer  
4 language. It is the system by which the Macon  
5 factory runs. Regardless of where you go in our  
6 factory or in R&D and you want information, that's  
7 where you have to go to get it to find out what is  
8 current, to find out what is the formula, what goes  
9 into casing, what goes into flavors for the  
10 production of each of our products.

11 Q. And is it your understanding that Brown &  
12 Williamson downloaded or printed out the corporate  
13 specification system information for its then-current  
14 cigarettes and provided it to the plaintiffs in this  
15 case?

16 MR. WILLOUGHBY: Objection to form.

17 A. Yes. In fact they are probably four or five  
18 thousand pages of documentation which I believe are  
19 in boxes 1685 and 1686.

20 Q. Now -- And you reviewed those in preparation for  
21 your deposition today; right?

22 A. I looked at them, yes.

23 Q. Okay. And you understand that those are the  
24 specifications for what cigarettes?

25 What's in those boxes? Let me rephrase the

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1 question that way.

2 MR. WILLOUGHBY: Do you understand the  
3 question?

4 THE WITNESS: No, I don't.

5 MR. WILLOUGHBY: Could you ask the question  
6 again, please?

7 A. One more time, please.

8 Q. All right. You referred me to some boxes.

9 A. Yes.

10 Q. And that, I understand, is according to your  
11 testimony the download of the Brown & Williamson  
12 corporate specification system; right?

13 A. Yes.

14 Q. What information is included in those boxes?

15 A. All information regarding formulas,  
16 specifications for all domestic products from 1988  
17 through 1996.

18 Q. All right. But it doesn't go back beyond 1988,  
19 does it?

20 A. No, it does not.

21 Q. Are the formulas for the cigarettes that were  
22 marketed by Brown & Williamson in Minnesota before  
23 1988, have they been produced to the plaintiffs?

24 A. Based on looking at the numbers of documents,  
25 the numbers of pages, the vast, vast majority of them

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1 have been produced.

2 Q. Now the corporate specification system includes  
3 flavor formulas; is that right?

4 A. Yes.

5 Q. And it also --

6 And that's for every flavor that's used in a  
7 Brown & Williamson cigarette?

8 MR. WILLOUGHBY: Objection to form.

9 A. Yes. Yes.

10 Q. All right. And it also includes what other  
11 information did you say? I'm sorry.

12 A. It includes, if you go to the first page where  
13 you have to go to get started, it includes in that  
14 cigarette design page a lot of information concerning  
15 the cigarette itself, its construction, what type of  
16 filter it uses, which blend it uses and a lot of  
17 other information.

18 Q. All right. Sir, would you agree that if you  
19 wanted to design a cigarette that had a certain  
20 length and a certain circumference and a certain  
21 nicotine delivery that you would be able to put those  
22 parameters into the computer program at Brown &  
23 Williamson and the Brown & Williamson computers would  
24 then be able to tell you what kind of blend to use  
25 and what other -- and what kind of paper to use and

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1 what other kind of filter to use?

2 MR. WILLOUGHBY: Objection to form. He's  
3 here to testify about Category 2 production of  
4 documents. I think that you're asking a question  
5 about designing a cigarette with a certain length and  
6 circumference and nicotine delivery, and I believe  
7 that's beyond the scope, Ms. Wivell.

8 MS. WIVELL: Well I think I'm going to tie  
9 it up, so let's see if we can get an answer to the  
10 question.

11 MR. WILLOUGHBY: Do you understand the  
12 question?

13 THE WITNESS: Yeah, I understand, but I --

14 A. I can't answer the question.

15 Q. Why not?

16 A. Because there's things in there that we don't  
17 do.

18 Q. What things don't you do?

19 A. I've never designed a product with a computer  
20 technically where I go in to put in the lengths of  
21 whatever -- I have used a model before to do some  
22 work. We target tar deliveries, not nicotine  
23 deliveries.

24 Q. Well let me ask you this. Does Brown &  
25 Williamson have a computer assisted cigarette design

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1 program?

2 A. Yes.

3 Q. It's referred to as CACD; right?

4 A. You'd have to -- "CACD" I'm not familiar with.

5 Q. Well you are familiar with a program that's in  
6 use at Brown & Williamson that's in -- referred to as  
7 computer assisted cigarette design; right?

8 A. There's a model I use that I call the cigarette  
9 design model.

10 Q. All right. Have all documents related to that  
11 -- By the way, it's a computer program; right?

12 A. It is a computer program.

13 Q. And have all the documents relating to that  
14 computer program been produced to the plaintiffs?

15 MR. WILLOUGHBY: Objection to the form.

16 Ms. Wivell, you're aware that those documents  
17 responsive to the September 4th order are not due  
18 until Wednesday. I mean, you're aware of that, are  
19 you not?

20 MS. WIVELL: Well he can answer my  
21 question. If they've been produced, they've been  
22 produced; if they're going to be produced, then I can  
23 ask him if they're going to be produced.

24 MR. WILLOUGHBY: I just want to make sure  
25 that pursuant to the court order it's Wednesday

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1 that's the date for that.

2 A. As of today they have not been produced.

3 Q. Are they going to be produced?

4 A. They are to be produced Wednesday.

5 Q. All right. And you understand -- Strike that.

6 Are all documents concerning computer-assisted  
7 design of cigarettes of Brown & Williamson going to  
8 be produced on Wednesday?

9 MR. WILLOUGHBY: Objection to the form. I  
10 believe that's beyond the scope of Judge  
11 Fitzpatrick's order.

12 A. The model and relevant input and output  
13 documents are going to be produced.

14 Q. All right. Were formula documents that have  
15 been in the possession of Brown & Williamson ever  
16 been destroyed?

17 A. Our current policy is that no flavor document  
18 ever gets destroyed if that flavor in fact is ever  
19 used in production.

20 Our past practices I'm not sure that every  
21 document, there could be some exceptions where one in  
22 fact was sent back to a flavor house but I'm not  
23 aware -- I'm not aware of a specific example, but it  
24 is possible.

25 Q. Well I was talking about document destruction

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1 and you mentioned sending flavor information back to  
2 a flavor house. Has that ever occurred?

3 A. I don't know for sure, but it is possible.

4 Again, our current practice is that we never get rid  
5 of any flavor that has been used in production. It  
6 is kept on file whether it's been revised or whether  
7 it becomes obsolete or for whatever reason it's not  
8 used any more.

9 Q. Is there Category 2 formula information  
10 maintained on a computer database apart from the  
11 corporate specification system?

12 A. There would possibly be some pieces like in the  
13 leaf blending area. That's the only clear example I  
14 can think of where there would be some documentation  
15 that would be similar to it.

16 Q. What documentation is that, sir?

17 A. Blend formulas.

18 Q. Have all the blend formulas been provided to the  
19 plaintiffs in this case?

20 MR. WILLOUGHBY: Subject to our earlier  
21 objection about responsive in this case?

22 MS. WIVELL: Well I'm asking if all have  
23 been produced.

24 A. To the best of my knowledge they have.

25 Q. Were any documents produced from those computer

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1 databases to the plaintiffs in this case?

2 A. Can you -- Which computer databases?

3 Q. The ones that you were just referring to in the  
4 leaf blender area.

5 A. Anything that they should have there, yes,  
6 should have been produced in some form so it would be  
7 redundant information.

8 Q. Well I understand it should have been produced.  
9 Was it, sir? Was it produced?

10 MR. WILLOUGHBY: I think his testimony is  
11 yes.

12 A. Yes, to the best of my knowledge it has been.

13 Q. Were any computer-generated documents relating  
14 to formula created specifically for this litigation?

15 A. The download of the corporate specification  
16 system.

17 Q. Was created specifically for this or was done  
18 specifically for this litigation?

19 A. It was the way to produce that particular  
20 documentation.

21 Q. Was the complete download of the corporate  
22 specification system produced to the plaintiff?

23 A. There were some duplication, I understand, in  
24 the printout, it was removed prior to it being  
25 produced.

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1 Q. But it's your testimony that the only thing that  
2 was removed was duplication?

3 A. That's my understanding.

4 Q. Who created the corporate specification system?

5 MR. WILLOUGHBY: Objection to the form.

6 A. Our information technology department.

7 Q. Who specifically?

8 A. I wouldn't know.

9 Q. Were all fields of information that are  
10 available on the corporate specification system  
11 provided to the plaintiffs in the download?

12 MR. WILLOUGHBY: Objection to the form.

13 A. All fields that would respond to the "sufficient  
14 to show" would be there, yes.

15 Q. What fields are a part of the corporate  
16 specification system that were not provided to the  
17 plaintiffs?

18 MR. WILLOUGHBY: Objection to the form,  
19 lack of foundation.

20 A. Packaging perhaps.

21 Q. What else?

22 A. That's the only thing I can really think of.

23 Q. You use this system on a fairly regular basis;  
24 right?

25 A. Yes.

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1 Q. And to your knowledge the only field of  
2 information that was not included in the download to  
3 the plaintiffs was packaging, is that your  
4 testimony?

5 MR. WILLOUGHBY: Objection to the form,  
6 lack of foundation.

7 A. To the best of my knowledge, yes.

8 Q. Well you reviewed the printouts in preparation  
9 for your deposition today; right?

10 A. I did not review the entire printout.

11 Q. I understand, because it's boxes; right?

12 A. It's two boxes.

13 Q. All right. But you -- you looked at the  
14 information that Brown & Williamson provided to the  
15 plaintiffs; right?

16 A. Yes.

17 MR. WILLOUGHBY: Are you talking about the  
18 corporate specification production or the entire  
19 Cat 2?

20 MS. WIVELL: No, no, the corporate  
21 specification production, those boxes.

22 A. Umm-hmm.

23 Q. Based on your review, are there any fields that  
24 were not provided to the plaintiff apart from  
25 packaging?

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1 MR. WILLOUGHBY: Asked and answered,  
2 objection to the form, lack of foundation.

3 A. No.

4 Q. Was the corporate specification system download  
5 information produced to the plaintiff in the form  
6 that it came out of the computer?

7 MR. WILLOUGHBY: Objection to the form.

8 A. It came out in the form that I would normally  
9 see it.

10 Q. Is it in the order that it was printed out of  
11 the computer?

12 A. Yes.

13 Q. So it's not mixed up in any way?

14 A. It is not mixed up at all.

15 Q. Apart from the computer-assisted design program  
16 we talked about earlier, does Brown & Williamson use  
17 computers in any other part of the design of its  
18 cigarettes?

19 MR. WILLOUGHBY: Objection to the form.

20 A. There's an additional model that's called the  
21 leaf blending model.

22 Q. Has that been produced to the plaintiffs?

23 A. No.

24 Q. Is it going to be produced on Wednesday?

25 A. It'll be produced on Wednesday.

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- 1 Q. All of it?
- 2 A. All of it.
- 3 Q. Are the input specifications going to be
- 4 produced for the leaf blending model on Wednesday?
- 5 MR. WILLOUGHBY: Objection to the form.
- 6 A. It's like the cigarette design model requires a
- 7 reference. You can put any reference you want in
- 8 there, but that's what you'd have to work from.
- 9 Q. What do you mean, it requires a reference?
- 10 A. There's no automatic input data.
- 11 Q. You have to put in the data --
- 12 A. You have to put the input data in.
- 13 Q. For example, if you wanted a cigarette of a
- 14 certain length, you put in the length of the
- 15 cigarette; is that right?
- 16 A. Which model are we talking about?
- 17 Q. Let's start with the leaf blending model.
- 18 A. The leaf blending model doesn't care about
- 19 length of a cigarette.
- 20 Q. Because it only talks about the blending of the
- 21 leaf, doesn't it?
- 22 A. (Nodding.)
- 23 Q. Right?
- 24 A. That's correct.
- 25 Q. All right. The other model that you talked

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1 about, what did you call it again?

2 A. I call it the cigarette design model.

3 Q. Okay. Using your terms, the cigarette design  
4 model, does it require you to put in a specification  
5 for the length of the cigarette?

6 A. Yes.

7 Q. Does it require you to put in a specification  
8 for nicotine delivery?

9 A. It requires you to put in empirical analytical  
10 information for the starting place that you want to  
11 start at.

12 Q. What do you mean by "empirical analytical  
13 information"?

14 A. Data from some particular cigarette that is  
15 already being produced from which you have actual  
16 delivery information such as tar and nicotine, puff  
17 count.

18 Q. And is that information that you just gave us in  
19 your last answer the kind of information you were  
20 referring to when you were talking about reference  
21 data?

22 A. Yes.

23 Q. Who was responsible for designing the cigarette  
24 design system that you were referring to?

25 MR. WILLOUGHBY: Ms. Wivell, I think we're

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1 getting beyond the scope here.

2 MS. WIVELL: I'm going to tie it up.

3 MR. WILLOUGHBY: Can you tell me how you're  
4 going to tie up the identity of the person who  
5 designed the cigarette design model to --

6 MS. WIVELL: I'm going to ask him if all of  
7 the documents were produced from that person.

8 MR. WILLOUGHBY: You can answer that if you  
9 know.

10 A. Originally I don't know. It's been developed  
11 over years.

12 Q. All right.

13 A. So the original starting person for the  
14 cigarette design model, I do not know who that is.

15 Q. Who is the person now who is responsible for the  
16 cigarette design model?

17 MR. WILLOUGHBY: Objection to the form.

18 A. There are two people.

19 Q. Who are they?

20 A. Kelly St. Charles, he is more responsible for  
21 let's call it the maintenance or changes to the  
22 model.

23 Q. Who's the other person?

24 A. Susan Ward.

25 Q. And were both of those persons' files checked

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1 for responsive Category 2 documents?

2 A. Yes.

3 Q. What steps would be necessary to obtain, in hard  
4 copy, the computer-generated design parameters for  
5 each commercially produced cigarette that Brown &  
6 Williamson has sold in Minnesota?

7 A. I don't understand the first part of the  
8 question.

9 Q. Okay. If -- If someone were to say to you  
10 please print out in hard copy the design parameters  
11 for each of Brown & Williamson's commercially  
12 produced cigarettes that are sold here in Minnesota,  
13 what would you do?

14 A. Can you define "design parameters"?

15 Q. Well let's talk about the cigarette design  
16 computer model that we've just been talking about.

17 A. Right.

18 Q. If we wanted to find out what input information  
19 had been put into that system for each one of the  
20 cigarettes that Brown & Williamson has sold in  
21 Minnesota --

22 A. Umm-hmm.

23 Q. -- that's on that system, what would you do?

24 A. It's on --

25 MR. WILLOUGHBY: Objection to form, lack of

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1 foundation. You may answer.

2 A. Which system?

3 Q. All right. The cigarette design system.

4 A. There's nothing on it.

5 Q. You'd have to input information; right?

6 A. Correct.

7 Q. Okay. What I'm trying to find out is how would

8 you go about getting a hard copy of the parameters

9 for the Kool cigarette that's -- I can go downstairs

10 and buy at the little sundry store downstairs?

11 MR. WILLOUGHBY: Objection to the form.

12 A. I would go look in those two boxes.

13 Q. It's there in those two boxes that you referred

14 to?

15 A. Yes.

16 Q. But those are the corporate specification system

17 downloads; right?

18 A. Yes.

19 Q. All right. Now would the same information be

20 printed out from that cigarette design computer model

21 that you were talking about?

22 A. If you wanted to go to corporate specifications

23 and pick up, let's say Kool 85, okay, or the Kool

24 King size, let's call it that, the short Kool, you

25 could get from there information which would be

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1 important for the first part of the standard. You  
2 would have to have empirical information about that  
3 Kool product, what was its tar delivery, what was its  
4 ventilation, what was its other physical parameters.  
5 And let's say it has a 15 milligram tar delivery and  
6 I want to change that to 14 milligrams, then I would  
7 use the cigarette design model to change filter  
8 parameters, maybe change tipping permeability,  
9 perhaps change the cigarette paper, whatever, and the  
10 cigarette design model would say, okay, you're close  
11 to 14 or you're not. It would show me basically  
12 where it was.

13 Q. Does this computer model also have a parameter  
14 that allows you to input nicotine delivery?

15 MR. WILLOUGHBY: Objection to form. How  
16 does this relate to collection and production? I  
17 mean, if you wanted to talk about the model, Ms.  
18 Wivell, I mean, that's a different deposition. But  
19 this witness is talking about the collection and  
20 production of documents. Can you tell me how you're  
21 going to tie that up?

22 Q. Do you have my question in mind, sir?

23 MR. WILLOUGHBY: Can you tell me how you're  
24 going to tie that back up to production?

25 MS. WIVELL: Mr. Willoughby, I don't have

1 to answer your questions. I have done so as a  
2 courtesy up till now.

3 MR. WILLOUGHBY: I understand that.

4 MS. WIVELL: But it's going to stop.

5 Q. Sir, my question is: Does this computer model  
6 also have a parameter that allows you to input  
7 nicotine delivery?

8 MR. WILLOUGHBY: Same objection, beyond the  
9 scope outside the scope of this deposition. I would  
10 hope that we would be able to tie this back up to the  
11 topic at hand soon.

12 A. Nicotine delivery would be part of the empirical  
13 information which would have to be used.

14 Q. So when I get the printout or the information on  
15 Wednesday concerning this computer model it will show  
16 a place to input for nicotine delivery; is that  
17 right, sir?

18 MR. WILLOUGHBY: Objection to the form.

19 A. It'll show a place for you to put in empirical  
20 information, yes.

21 Q. That calls for what you're aiming for for  
22 nicotine delivery; right?

23 MR. WILLOUGHBY: Objection to the form,  
24 asked and answered, outside the scope of this  
25 deposition, lack of foundation.

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1 A. No.

2 Q. What would the name of that empirical data entry  
3 point be?

4 A. It would come from empirical data that you  
5 already have from analytical results.

6 Q. Now in this corporate specification system is  
7 there a place for entry of empirical data concerning  
8 nicotine delivery?

9 A. No.

10 Q. Is it something that is called for in the  
11 corporate specification system?

12 MR. WILLOUGHBY: Objection to the form,  
13 outside the scope of this deposition.

14 A. Can you repeat the question?

15 Q. Well let me ask it this way:

16 Does the corporate specification system, as  
17 utilized at Brown & Williamson, have as a field of  
18 information any information about nicotine delivery?

19 MR. WILLOUGHBY: Objection to the form,  
20 outside the scope of this deposition.

21 A. No.

22 Q. Is there someplace in the corporate  
23 specification system where one is asked to specify  
24 the tar and nicotine delivery that one is seeking in  
25 the cigarette?

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1 MR. WILLOUGHBY: Outside the scope of this  
2 deposition, objection to form, lack of foundation.

3 A. No.

4 Q. I'm sorry, sir?

5 A. No.

6 Q. So is nicotine delivery a field of information  
7 that is captured at all by the corporate  
8 specification system?

9 MR. WILLOUGHBY: Ms. Wivell, we've produced  
10 these documents. The documents speak for  
11 themselves.

12 A. Nowhere in corporate specifications will you  
13 find any reference to any deliveries.

14 Q. So there's no field of information that's  
15 included in the system concerning tar and nicotine  
16 delivery as it's used at Brown & Williamson; is that  
17 right?

18 MR. WILLOUGHBY: Objection to form, outside  
19 the scope of this deposition, lack of foundation.  
20 You can answer if you know.

21 A. There is no fields for that that I know.

22 Q. Now sir, what steps did Brown & Williamson take  
23 to try and locate documents from flavor houses that  
24 it uses?

25 A. I'm not aware of any with the flavor houses.

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1 Q. Well you understand that Brown & Williamson does  
2 buy flavors from various flavor houses; right?

3 A. Yes.

4 Q. Did Brown & Williamson contact any flavor houses  
5 in order to obtain formula information?

6 A. Not that I'm aware of.

7 Q. Has your company ever returned any flavor house  
8 formula to any third-party flavor houses?

9 A. As I stated earlier, it's possible, but I'm not  
10 aware of any specific instances.

11 Q. Has -- I'm sorry.

12 A. It's not current practice.

13 Q. Has Brown & Williamson ever turned over flavor  
14 information to any of its lawyers in order that they  
15 might keep it?

16 MR. WILLOUGHBY: Objection to the form.

17 Are you speaking about original documents, Ms.

18 Wivell?

19 MS. WIVELL: Yes, sir.

20 A. Not that I'm aware of.

21 Q. How is information about third-party flavor  
22 house ingredients stored at Brown & Williamson?

23 A. Stored in Miss Smith's office.

24 Q. If you or another company official wanted to  
25 find out what ingredients were in a particular

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1 flavor, what would you do?

2 A. I'm not allowed to see that.

3 Q. Let's assume you were. What would you do to

4 find out what was in a particular flavor?

5 A. I would have to go to Mrs. Smith.

6 Q. All right. What kind of documents does she have

7 in her office that reflect those flavors ingredients?

8 A. She has flavor disclosures.

9 Q. What's a flavor disclosure?

10 A. It's a proprietary flavor formula from a flavor

11 house.

12 Q. Now is she the person responsible for

13 maintaining flavor house formula information in order

14 to provide the annual list to the U.S. Department of

15 Health and Human Services?

16 MR. WILLOUGHBY: Objection to form.

17 A. As far as I know, that's correct.

18 Q. Were all of the documents in her possession

19 provided to the plaintiffs?

20 MR. WILLOUGHBY: Objection to form.

21 A. As far as I know they were.

22 MR. WILLOUGHBY: All responsive documents,

23 is that what you're asking?

24 MS. WIVELL: No, sir. My question was were

25 all documents --

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1 MR. WILLOUGHBY: Of any kind?

2 MS. WIVELL: -- relating to flavors and  
3 formulas in her possession provided to the  
4 plaintiffs.

5 MR. WILLOUGHBY: Same objection. Beyond  
6 the scope of the obligation of Brown & Williamson.

7 A. Same question?

8 Q. Yes, sir.

9 MR. WILLOUGHBY: Do you recall the  
10 question?

11 A. Go ahead. One more time.

12 Q. Were all documents relating to flavors and  
13 formulas in her possession provided to the  
14 plaintiffs?

15 MR. WILLOUGHBY: Same objection.

16 A. As far as I know, all responsive documents were  
17 produced.

18 Q. Did Brown & Williamson take any steps to assure  
19 that all underlying documents for the company's  
20 annual submission to HHS were produced to the  
21 plaintiffs?

22 MR. WILLOUGHBY: Objection to the form.

23 A. Can you repeat that?

24 Q. All right. Did Brown & Williamson take steps to  
25 assure that all of the underlying documents for the

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1 company's annual submission to HHS were produced to  
2 the plaintiffs?

3 A. Could you define "underlying"?

4 Q. Well, sir, Brown & Williamson produces a list  
5 yearly of the ingredients in its flavors to the  
6 Department of Health and Human Services; right?

7 A. Correct.

8 Q. Were all of the underlying documents that that  
9 list was compiled from provided to the plaintiffs in  
10 this case?

11 MR. WILLOUGHBY: Same objection.

12 A. If it was responsive, I'm sure it was produced.

13 Q. Well are there documents that someone determined  
14 just weren't responsive that contained ingredients  
15 information for the flavors that were used in Brown &  
16 Williamson's cigarettes marketed in Minnesota?

17 MR. WILLOUGHBY: Same objection.

18 A. Based on the various requests, that wouldn't be  
19 possible.

20 Q. Why do you say it wouldn't be possible, sir?

21 A. It was requested.

22 Q. If it was requested, it was produced, is that  
23 your testimony?

24 A. Yes.

25 Q. Did Brown & Williamson ever use ingredients that

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1 were not disclosed on the annual HHS list?

2 MR. WILLOUGHBY: Objection to the scope.

3 That's far beyond this topic on the 30.02, Ms.

4 Wivell, and I don't believe that this witness is

5 prepared to testify one way or the other on that.

6 A. I wouldn't know.

7 Q. Well sir, were documents about ingredients that

8 might not have been on an HHS list produced to the

9 plaintiffs in this case?

10 MR. WILLOUGHBY: Same objection.

11 Q. Formula documents.

12 MR. WILLOUGHBY: Same objection.

13 A. It's my belief that all responsive documents

14 have been produced.

15 Q. Well sir, do you know if there were documents

16 concerning ingredients that were not disclosed to the

17 Department of Health and Human Services but which

18 were used in Brown & Williamson's cigarettes, whether

19 those documents have been produced?

20 MR. WILLOUGHBY: Same objection.

21 A. I wouldn't know.

22 Q. Well you understand, for example, that Brown &

23 Williamson used Coumaren in its cigarettes at one

24 time.

25 MR. WILLOUGHBY: Objection to the form,

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1 lack of foundation, outside the scope of this  
2 deposition.

3 A. I never saw a formula that said Coumaren on it.

4 Q. So you just don't know as you sit here?

5 A. I really don't know, yeah.

6 Q. And you can't tell us as you sit here whether or  
7 not all documents relating to the use of Coumaren  
8 have been produced to the plaintiffs, can you?

9 MR. WILLOUGHBY: Objection to the form.

10 A. I can tell you that a good-faith effort has been  
11 made to produce -- to identify and produce all  
12 responsive documents.

13 Q. But you can't, as you sit here today, tell me  
14 whether all documents relating to the use of Coumaren  
15 in Brown & Williamson's cigarettes have been  
16 produced, though, can you?

17 MR. WILLOUGHBY: Same objection.

18 A. As I said, I know that a good-faith effort has  
19 been made to identify every document that is  
20 responsive, and when identified it has been produced.

21 Q. So it's your testimony that every responsive  
22 document has been produced to the plaintiffs in this  
23 case; is that right?

24 MR. WILLOUGHBY: On Category 2?

25 MS. WIVELL: Yes, sir.

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- 1 A. That's correct.
- 2 Q. Now sir, has your company ever purchased
- 3 reconstituted tobacco manufactured by a third-party
- 4 vendor?
- 5 A. Yes.
- 6 Q. From whom has Brown & Williamson purchased
- 7 recon?
- 8 A. Kimberly-Clark.
- 9 Q. Who else?
- 10 A. The American Tobacco Company.
- 11 Q. Anyone else?
- 12 A. Not that I'm aware of.
- 13 Q. All right. Well did Brown & Williamson contact
- 14 Kimberly-Clark to determine whether it had any
- 15 documents relating to process details or ingredients
- 16 for recon that was purchased by Brown & Williamson?
- 17 A. I don't know for sure.
- 18 Q. Well what's your best-educated testimony on this
- 19 subject?
- 20 A. The recon specifications?
- 21 Q. Yeah. Did Brown & Williamson contact
- 22 Kimberly-Clark to try and get documents relating to
- 23 that?
- 24 A. Not that I'm aware of, no.
- 25 Q. All right. Well did Brown & Williamson contact

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1 American Tobacco to see whether American Tobacco had  
2 documents relating to the processing and ingredients  
3 for the recon it purchased from American Tobacco?

4 MR. WILLOUGHBY: Objection to the form.

5 A. Not that I'm aware of because our specifications  
6 for recon tobaccos has been produced, and part of  
7 those specifications has to do with process.

8 Q. But I'm talking about now the reconstituted  
9 tobacco that American -- that American supplied for  
10 Brown & Williamson.

11 Did Brown & Williamson make any attempt to get  
12 the information concerning the process American  
13 Tobacco used to make that recon?

14 MR. WILLOUGHBY: Objection to the form,  
15 asked and answered.

16 A. It would be, in my opinion, that Brown &  
17 Williamson would have specified the process  
18 specifications, therefore they have already been  
19 produced.

20 Q. Sir, has Brown & Williamson ever used  
21 reconstituted tobacco products manufactured by its  
22 own company?

23 MR. WILLOUGHBY: You mean by Brown &  
24 Williamson?

25 MS. WIVELL: Yes, sir.

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1 A. Yes.

2 Q. All right. Please describe all the steps that  
3 Brown & Williamson took to locate documents setting  
4 out the process details and chemicals and ingredients  
5 used for manufacturing the reconstituted product.

6 A. Those formula were produced just as any other  
7 Category 2 formula were produced. Initially some  
8 interviews would have taken place to determine where  
9 those documents would have resided, those documents  
10 would have resided and I think in fact did reside  
11 with our recon group, and in fact they were produced  
12 to the plaintiffs.

13 Q. All of them?

14 A. Yes, all of them.

15 MR. WILLOUGHBY: Objection to the form.

16 Q. Now has Brown & Williamson ever made changes in  
17 any of the formulas for any of the cigarettes it sold  
18 here in Minnesota?

19 A. Yes.

20 Q. Now sir, has Brown & Williamson searched for  
21 documents that reflect the changes in the formulas or  
22 specifications that were made in the cigarettes that  
23 it sold in Minnesota over the years?

24 A. Yes.

25 Q. What process was undergone to make sure that the

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1 plaintiffs got all of the formula change  
2 information?

3 MR. WILLOUGHBY: Objection to the form.

4 A. The same process that produced all of the  
5 responsive documents.

6 Q. Is there someplace, and forgive me because I've  
7 taken two of these kind of depositions in a row.

8 Is there someplace that describes all of the  
9 changes in the Kent formula -- no, the Kool formula  
10 over the years?

11 A. No particular one place that I'm aware of, no.  
12 You will find, in the production, product development  
13 committee minutes which outline a lot of the  
14 specifications that have changed.

15 Q. Were all of the product development committee  
16 minutes produced to the plaintiffs?

17 MR. WILLOUGHBY: Objection to form.

18 A. Those that were identified as far as I know,  
19 yes, they were produced.

20 Q. Did Brown & Williamson search for documents  
21 describing or discussing the basis for any formula or  
22 specification change?

23 MR. WILLOUGHBY: Objection, asked and  
24 answered. I don't understand how that was different  
25 from what you just asked, Ms. Wivell.

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1 MS. WIVELL: Well, it's late, let me go  
2 back and look. My last question was were all of the  
3 product development committee minutes produced to the  
4 plaintiffs.

5 MR. WILLOUGHBY: I think you'd earlier  
6 asked if all documents relating to changes had been  
7 produced --

8 MS. WIVELL: Well did Brown & Williamson --

9 MR. WILLOUGHBY: -- in response to --

10 MS. WIVELL: Let me rephrase.

11 Q. Did Brown & Williamson search for documents  
12 describing the reason for the formula or  
13 specification change?

14 MR. WILLOUGHBY: Objection to the form.  
15 You can answer.

16 A. We searched for all responsive documents, and if  
17 those types of documents were found, they would be  
18 responsive, therefore they would have been produced.

19 Q. Did Brown & Williamson search for documents  
20 reflecting research supporting any change in formulas  
21 or specifications?

22 A. Basically the same answer I just gave.

23 Q. All right. Sir, if you wanted to find a  
24 document relating to research supporting a change in  
25 the Kool formula, for example, where would you look

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1 for it?

2 A. I would first look in the corporate  
3 specification system.

4 Q. All right. And if you didn't find it there  
5 because it was pre-1988, where would you look?

6 A. I wouldn't -- I wouldn't look to start with, I  
7 would go talk to some individuals.

8 Q. Who would you talk to?

9 A. Drew McMurtrie, Rick Gonterman, someone who was  
10 with the company at that time.

11 Q. Now you said Mr. McMurtrie had a lot of category  
12 2 documents; is that right?

13 MR. WILLOUGHBY: Objection to the form.

14 A. I'm supposing that he does, yes.

15 Q. Well do you know if he does?

16 A. I don't know for a fact, no, I haven't -- I  
17 haven't personally gone through his files.

18 Q. Is there someplace other than the corporate  
19 specification system where the formulas and processes  
20 for the various marketed Brown & Williamson  
21 cigarettes are kept?

22 A. Nothing to that precise, no.

23 Q. Well are there manuals which set out, from --  
24 Strike that.

25 From back in the old days before everything was

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1 on the computer system, were there manuals at Brown &  
2 Williamson that set out what the formulas were and  
3 the specifications?

4 A. There were -- I wouldn't call them manuals,  
5 perhaps notebooks.

6 Q. All right. Who had the notebooks?

7 A. Leaf blenders would have their notebooks, other  
8 people for other parts of the process would have  
9 their notebooks as well.

10 Q. All right. Well putting the leaf blenders  
11 aside, have the other notebooks from the other steps  
12 in the process been produced to the plaintiffs?

13 MR. WILLOUGHBY: Objection to form.

14 A. Again, to the best of my knowledge all  
15 responsive documents have been produced.

16 Q. I understand that, sir, but I'm asking  
17 particularly about, for example, the specifications  
18 for the processes that are not on the corporate  
19 specification system because they're older than  
20 that.

21 A. Umm-hmm.

22 Q. Have those notebooks been produced?

23 A. If they were identified, they were produced.

24 Q. Have you seen them in preparation for your  
25 deposition?

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1 A. I've seen documents that go back to the 1920s.

2 Q. All right. Did you see the notebooks?

3 A. I've seen pages from notebooks. I've seen

4 notebook entries from 1936, '37, into the '40s.

5 Q. I'm asking you did you see the notebooks in

6 their entirety?

7 A. I saw some entire notebooks, yes.

8 Q. All right. Concerning the formulas and

9 specifications for cigarettes that had been marketed

10 by Brown & Williamson?

11 A. Concerning form -- I saw mostly formulas.

12 Q. Were the notebooks taken apart at the time they

13 were produced and produced to the plaintiffs in

14 pieces?

15 A. I'm -- I don't understand your question.

16 Q. Well you said you saw complete notebooks; right?

17 A. Yes. Umm-hmm.

18 Q. Were those notebooks produced to the plaintiffs

19 in their entirety?

20 A. At any time there was a collection, anywhere the

21 entire set would have been collected together, yes.

22 Q. Did Brown & Williamson transfer any documents

23 relating to process and specification or formula to

24 anybody that you're aware of?

25 MR. WILLOUGHBY: Objection to the form.

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1 A. Not that I'm aware of, no.

2 Q. Sir, have you ever heard that Brown & Williamson  
3 transferred any documents relating to process or  
4 formula or specification?

5 A. No.

6 Q. Has Brown & Williamson ever transferred any  
7 documents relating to process or specification to any  
8 of its attorneys?

9 MR. WILLOUGHBY: Objection to the form.  
10 Are you talking about original documents here?

11 MS. WIVELL: Yes, sir.

12 A. I don't know.

13 Q. Has Brown & Williamson transferred any documents  
14 relating to the process, formula or specifications of  
15 its cigarettes to any other defendants in this case?

16 A. Not that I'm aware of.

17 MS. WIVELL: Can we take a moment? I just  
18 asked you a question that you didn't have the answer  
19 to, whether Brown & Williamson had changed or  
20 transferred any documents to its attorneys.

21 Could we take a break and you ask Mr. Willoughby  
22 whether he's aware of any information, and then we  
23 can go back on the record.

24 MR. WILLOUGHBY: And you're talking about  
25 original documents here where Brown & Williamson

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1 would not be retaining any underlying document.

2 MS. WIVELL: That's right.

3 MR. WILLOUGHBY: Okay.

4 THE REPORTER: Off the record, please.

5 (Recess taken from 4:11 to 4:16 p.m.)

6 BY MS. WIVELL:

7 Q. Sir, has Brown & Williamson ever transferred any  
8 original documents related to process, formula or  
9 specification to any of its attorneys?

10 A. Not that we're aware of. Our investigation has  
11 not turned up any such documents.

12 Q. All right. Now sir, you referred to some  
13 notebooks a little earlier just before we took our  
14 break. Do you recall that?

15 A. Yes.

16 Q. All right. What were those notebooks called?

17 A. I'm not sure they even had a name, like on the  
18 spine or anything. The -- Volumes of documents.

19 Q. Well if I wanted to go look at those documents  
20 to know specifically what you were referring to, what  
21 would you suggest I go look for?

22 A. You'd have to go look in the right cabinet, pick  
23 the right book and they're in series, in series by  
24 blend, in series by time.

25 Q. Where is this cabinet located?

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1 A. The one particular one I'm talking about is in  
2 our leaf lab.

3 Q. In your leaf lab?

4 A. Yes.

5 Q. Are you talking about leaf blenders manuals or  
6 are you talking about something beyond leaf blenders  
7 manuals?

8 A. These are leaf blenders formula.

9 Q. Do you know whose office they would be in?

10 A. They're not in an office.

11 Q. They have any particular title on the first  
12 page?

13 A. Each one of them will have a title of  
14 specifically what it relates to, and again as you go  
15 back in years with B&W the format and the form  
16 changes slightly, but you can read that it's B&W and  
17 you can then tell that it's a particular strip blend  
18 perhaps. It's the same type of information that's  
19 contained on the current electronic form in the  
20 corporate specification system.

21 Q. But I'm just asking your best estimate of the  
22 titles of these kinds of things. Can you give me  
23 some examples?

24 A. Blend BW dash 2132.

25 Q. What would that be for?

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1 A. That would be a strip blend coded as B&W 2132.

2 Q. All right. Is there a document that sets out  
3 what 2132 is?

4 A. In this particular case the document's there in  
5 front of you, it's a sheet, and it would contain  
6 specific information about the blends.

7 Q. Are there other documents or other notebooks  
8 whose titles you recall?

9 A. Not really titles of notebooks. I know from  
10 having looked at the Category 2 production there is  
11 literally thousands of pages of documents like this.

12 Q. And have all of these notebooks been produced to  
13 the plaintiff as part of the Category 2 production?

14 MR. WILLOUGHBY: Objection to form.

15 A. I know that all responsive documents have been  
16 produced.

17 Q. Well have all of these notebooks in this cabinet  
18 that you just described been produced to the  
19 plaintiffs?

20 A. Since I know that they are Category 2, yes, I  
21 know they have been produced.

22 Q. All of them have been produced; right?

23 A. To the best of my knowledge, all of them have  
24 been produced.

25 Q. Is there a particular person whose name appears

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1 on these documents as being their author?

2 A. Not particularly, and if there were -- now I may  
3 have seen some names, but in the older documents  
4 those names don't mean anything to me so I didn't  
5 memorize any of them.

6 Q. What names did you see on these documents that  
7 you recall?

8 A. On some blends you'll see Roger Black listed a  
9 lot.

10 Q. All right. For what blend is Roger Black  
11 responsible or was he responsible?

12 A. I can't recall a specific blend. He was -- He  
13 now is the director of the leaf group.

14 Q. All right. What other names did you recall  
15 seeing in these notebooks?

16 A. That's the only one I can particularly recall.

17 Q. Is there an outline anywhere of the various  
18 formulas that have been used for Brown & Williamson's  
19 cigarettes over the years?

20 MR. WILLOUGHBY: Objection to form.

21 A. Not that I'm aware of, not an inclusive  
22 year-by-year brand-by-brand total, no.

23 Q. Now sir, Brown & Williamson uses ammonia  
24 technology in its cigarettes that it markets here in  
25 Minnesota; right?

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1 A. Yes.

2 Q. All right. When did Brown & Williamson start  
3 using ammonia technology in the cigarettes that it  
4 marketed here in Minnesota?

5 A. I would not know that.

6 Q. Well sir, did Brown & Williamson produce all of  
7 the documents relating to ammonia technology for the  
8 cigarettes that have been produced in Minnesota?

9 MR. WILLOUGHBY: Objection to the form.

10 A. I know that all responsive documents would have  
11 been produced, and in fact I believe perhaps may have  
12 been even a manual produced.

13 Q. What manual are you referring to, sir?

14 A. I'm not sure. I just -- It's sticking back here  
15 somewhere.

16 Q. Was there a manual on how to ammoniate  
17 cigarettes?

18 A. I'm not positive. It's just a -- something  
19 that's stuck back here [indicating back of head].

20 Q. Are there any documents relating to the use of  
21 ammonia in Brown & Williamson's cigarettes that  
22 you're aware of that have not been produced to the  
23 plaintiffs?

24 MR. WILLOUGHBY: Objection to the form.

25 A. I'm not aware of any responsive documents that

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1 have not been produced.

2 Q. Well sir, I understand that, but that's not my  
3 question. My question's slightly different.

4 Are there any documents relating to the use of  
5 ammonia in Brown & Williamson's cigarettes that have  
6 not been produced to the plaintiffs?

7 MR. WILLOUGHBY: Same objection.

8 A. Not that I'm aware of.

9 MS. WIVELL: I have nothing further.

10 MR. WILLOUGHBY: Excuse me?

11 MS. WIVELL: I said: "I have nothing  
12 further."

13 MR. WILLOUGHBY: I have no questions.

14 THE REPORTER: Off the record, please.

15 (Deposition concluded at approximately  
16 4:22 p.m.)

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1 C E R T I F I C A T E

2 I, Debby J. Campeau, hereby certify that I  
3 am qualified as a verbatim shorthand reporter; that I  
4 took in stenographic shorthand the testimony of GARY  
5 W. WALLACE at the time and place aforesaid; and that  
6 the foregoing transcript consisting of 70 pages is a  
7 true and correct, full and complete transcription of  
8 said shorthand notes, to the best of my ability.

9 Dated at Lino Lakes, Minnesota, this 29th  
10 day of September, 1997.

11

12

13

14 DEBBY J. CAMPEAU, RPR

15 Notary Public

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1 S I G N A T U R E P A G E

2 I, GARY W. WALLACE, the deponent, hereby  
3 certify that I have read the foregoing transcript,  
4 consisting of 70 pages, and that said transcript is a  
5 true and correct, full and complete transcription of  
6 my deposition, except per the attached corrections,  
7 if any.

8

9 (Please check one.)

10               Yes, changes were made per the attached

11 \_\_\_\_\_ (#) Signature Page Addendums.

12

13                   I have made no changes.

14

15

16

17

18

19

20 GARY W. WALLACE

21 Deponent

22 Sworn and subscribed to before me this day

23 of \_\_\_\_\_, 199\_\_.

24 Notary Public

25 My commission expires: (DJC)

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